

**FILED**

**JUL 26 2006**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOHN S. NOLAN,

Defendant - Appellant.

Nos. 05-30219

05-30220

D.C. No. CR-02-00390-REJ

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the District of Oregon  
Robert E. Jones, District Judge, Presiding

Submitted July 24, 2006<sup>\*\*</sup>

Before: ALARCÓN, HAWKINS, and THOMAS, Circuit Judges.

John S. Nolan appeals pro se from the denial of his notice and demand seeking retroactive recusal of District Court Judge Robert E. Jones, and the denial of his petition for writ of mandamus requesting the same recusal. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Appellant contends that the district court erred in denying his notice and demand for recusal pursuant to 28 U.S.C. § 455. We disagree. Appellant's trial concluded approximately 18 months before he filed this motion. Further, he made several requests for Judge Jones to recuse himself during trial which were all denied. Because this court can affirm on any ground, *see Bonin v. Calderon*, 59 F.3d 815, 823 (9th Cir. 1995), we conclude that appellant's notice and demand for recusal was untimely. *See Preston v. United States*, 923 F.2d 731, 733 (9th Cir. 1991) ("While no per se rule exists regarding the time frame in which recusal motions should be filed after a case is assigned to a particular judge, if the timeliness requirement is to be equitably applied, recusal motions should be filed with reasonable promptness after the ground for such a motion is ascertained.").

Weighing the appropriate factors, we also reject appellant's contention that the district court erred in denying his petition for writ of mandamus. *See Bauman v. United States Dist. Court*, 557 F.2d 650, 654-55 (9th Cir. 1977).

All pending motions are denied.

**AFFIRMED.**